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THE SOLDIER AND A JUST WAR

By

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The Ohio State University, 1998

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In his article "Innocence, Self-Defense, and Killing in War," Jeff McMahan asks how it can be permissible to voluntarily join the military given the knowledge that one is likely to be used as an instrument of injustice. His question raises troublesome concerns for anyone who desires to serve in the military and also desires to live a morally just life; if McMahan is right, it seems unlikely that one can do both. I will explore this problem by questioning whether or not someone who joins the military gives up the right to judge a war as unjust. I will specifically concern myself with the US soldier.

McMahan advances the additional claim that if a war were unjust, then a soldier's actions would be murderous. While there is a *necessary* connection between an unjust war and the soldier's unjust actions, I argue that soldiers can be called to fight in wars where justness is not known. The facts used to make the determination of justness are often unclear until long after the fighting has started. In wars where the justness is not yet determined, I will argue that soldiers can and should fight justly.

I do not offer the stronger argument that a soldier cannot be used as an instrument of injustice. It is sufficient to elucidate how it can be morally permissible to voluntarily join the military. I will show that the US soldier can serve and be morally responsible,

because he has the right and responsibility for deciding *when* he is going to fight. In fact, this is the case in the US military today because

- the soldier has a moral right and responsibility to determine the justness of a war and
- the soldier can fight justly in a war where justness is not known.

To establish the soldier's right and responsibility to determine the justness of war, I will first explicate and evaluate how the justness of a war is determined for modern-day soldiers within the context of Aquinas' Just War Theory.

To establish that the soldier can fight justly in a war where justness is not known, I will discuss the distinction between *jus ad bellum*, the justice of war and *jus in bello*, justice in war.

Once established, I will show how exercising this right, and accepting this responsibility, is consistent with military service. Because the soldier has both a right and a responsibility for judging the justness of a war, he decides when he is going to fight. Thus, there is no necessary connection that commits the soldier to either being or becoming an instrument of violence.

My argument refutes McMahan in the following two ways. First, in joining the military, it is not the case that the soldier is *allowing* himself, *viz.*, abdicating his moral responsibilities, to become an instrument for unjust violence. Second, I will show that instead of engaging in violence *likely* to be unjust, the soldier who properly exercises his rights and meets his responsibilities, one of which is determining the justness of war, can and should act justly. Hence military service, properly understood, is morally permissible.

THE SOLDIER AND A JUST WAR

A Thesis

Presented in Partial Fulfillment of the Requirements for

the Degree of Master of Arts in the

Graduate School of The Ohio State University

By

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1998

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War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse. The person who has nothing for which he is willing to fight, nothing which is more important than his own personal safety, is a miserable creature and has no chance of being free unless made and kept so by the exertions of better men than himself.

John Stewart Mill

ABSTRACT

In his article "Innocence, Self-Defense, and Killing in War," Jeff McMahan asks how it can be permissible to voluntarily join the military given the knowledge that one is likely to be used as an instrument of injustice. His question raises troublesome concerns for anyone who desires to serve in the military and also desires to live a morally just life; if McMahan is right, it seems unlikely that one can do both. I will explore this problem by questioning whether or not someone who joins the military gives up the right to judge a war as unjust. I will specifically concern myself with the US soldier.

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I do not offer the stronger argument that a soldier cannot be used as an instrument of injustice. It is sufficient to elucidate how it can be morally permissible to voluntarily join the military. I will show that the US soldier can serve and be morally responsible, because he has the right and responsibility for deciding *when* he is going to fight. In fact, this is the case in the US military today because

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Dedicated to the memory of
Chief Master Sergeant Richard A. Gauvin
United States Air Force AMMO Chief

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SECTION 1

INTRODUCTION

In his article "Innocence, Self-Defense, and Killing in War," Jeff McMahan asks how it can be permissible to voluntarily join the military given the knowledge that one is likely to be used as an instrument of injustice. His question raises troublesome concerns for anyone who desires to serve in the military and also desires to live a morally just life; if McMahan is right, it seems unlikely that one can do both. I will explore this problem by questioning whether or not someone who joins the military gives up the right to judge a war as unjust. I will specifically concern myself with the US soldier.

I will argue that not only does the soldier have a right to judge the justness of a war, he has a corresponding responsibility to do so if he is to live a morally just life. Once I have established this, I will show how exercising this right, and accepting this responsibility, is consistent with military service.

As defined by the Constitution, it is the Congress that has the power to declare war. The United States has not been in a declared war since 1941, and in the intervening years it has been the President, as Commander in Chief of the armed forces, who has ordered military involvement in warlike conflicts. For example, we make mention of the Vietnam War and the Korean War, but these would be more appropriately termed

conflicts, in a strict, definitional sense. Because of this apparent disconnection between a legal definition and common parlance, and because McMahan has not indicated what he considers to be *war*, I am compelled to offer a definition to facilitate further meaningful discussion.

Carl von Clausewitz's writings in On War have had a profound impact on US military doctrine, so it is natural to look to him for a clear definition of war. In the very first pages of his book, he says that "[w]ar is [an] act of force to compel our enemy to do our will."¹ This seems straightforward enough in Clausewitz's example of a wrestling match. Each wrestler tries to force the other to yield. While it is not clear that Clausewitz considered only the use of *military* force as war, this is a distinction I will draw on for the purposes at hand.

Clausewitz elaborated on his initial definition by saying that "[w]ar is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means."² Hence, a war is necessarily an extension of politics. While war may not be the only political instrument a government has at its disposal, it is one of the instruments to be sure. I am specifically concerned with war between the United States and another nation or nations, and I will consider a nation to be a country with an independent government. Thus, combining Clausewitz's two definitions of war with a

¹ Carl von Clausewitz, On War, ed. and trans. Michael Howard and Peter Paret (New Jersey: Princeton University Press, 1984) 75.

² Clausewitz 87.

specific concern for the use of military force against another nation yields the following definition: war is an extension of the politics of one nation, *A*, when a military force is used to compel another nation, *B*, to do *A*'s will.

While this gets closer to a clear definition of war, my discussion is directed to the level of the individual soldier. At this level, it is common to think that "[o]nce political leaders resort to the use of force, or possibly even the threat of force, they may place their forces 'at war,' at least from the perspective of those engaged."³ By this way of thinking, the scope of war is broadened to include not just the use of force but the *threatened* use of force as well. As is also suggested, the individual soldier involved in either the use of force or the threatened use of force considers himself at war. The domain of military activities characterized by the use of force or threatened use of force is significant (fig 1) and certainly includes more than the large-scale wars that typify common usage of the term *war*.

Combatting terrorism	Noncombatant evacuation operations
Counterdrug operations	Peace Operations
Enforcement of sanctions	Protection of shipping
Enforcing exclusion zones	Recovery Operations
Ensuring freedom of navigation	Strikes and Raids
Nation assistance	Support to insurgency

Figure 1: Examples of Military Activities Characterized by Force or the Threat of Force⁴

³ Air Force Doctrine Document 1, September 1997, 7.

⁴ Air Force Doctrine Document 1, September 1997, 16.

Thus, the scope of war is necessarily, by my definition, wider than common usage of the term *war* and perhaps also more encompassing than what McMahan had in mind. If a conflict meets the following definition, I will consider it a war:

The use of military force, or the threatened use of military force, which is ordered by the President, Congress, or both, and waged by one or more members of the US armed forces as an extension of US politics in an attempt to bend another nation to our will.

SECTION 2

FRAMING THE DEBATE

McMahan writes that

[p]ersons who join the military are typically aware that abdication of moral autonomy is a condition of military life; indeed, some join the military in part in order to enjoy the freedom from responsibility. They know, in short, that they are allowing themselves to become instruments of the wills of others. There is, moreover, something else [soldiers] could know with a little reflection, which is that most wars in which people fight are unjust. This follows from the assumption that a war can be just on at most one side, though it can be unjust on both. ... [I]n joining the military, one allows oneself to become an instrument for the violent pursuit of purposes that are more than likely be unjust.⁵

He is raising two important issues. First, there is a question of whether or not the soldier has moral autonomy. McMahan implies that the soldier gives up all, or at least a majority, of his moral autonomy. Indeed, some join the military to be free of any responsibility for making moral decisions he says. It is unlikely he thinks that the soldier gives up *all* of his moral autonomy. For example, it is unlikely that he thinks the soldier gives up his autonomy to make moral decisions, *e.g.*, When, if ever, is it okay to lie? or Is there a moral obligation to remain faithful to my spouse? or Should I drink and drive?

⁵ Jeff McMahan, "Innocence, Self-Defense, and Killing in War," The Journal of Political Philosophy 2.3 (1994): 206-207.

Presumably, McMahan is concerned about the abdication of *some* moral autonomy, specifically whether or not the soldier has the moral autonomy to make those decisions characteristic of a war, *e.g.*, When, if ever, is it okay to kill an enemy soldier? or Is killing an innocent person ever justified? or Is this war unjust? I am particularly concerned with addressing his concern about whether or not the soldier has the moral autonomy to judge the justness of a war. I will argue that the soldier accepts limitations on his autonomy in order to facilitate the good order and discipline that mark an effective military force, but he still very much retains a right to make moral decisions. This right does not exclude the right to decide the justness of a war. I will also argue that accepting limitations as a condition of military service is in no way comparable to an abdication of moral autonomy.

The second issue McMahan raises concerns the justness of a war. To clarify, before going any further, judgments about the justness of a war do not assess its *singular* justness. For this reason, we do not say that World War II was a just war unless we explicitly state, or presume it is contextually clear, to which nation the claim refers. For instance, we might claim that the United States' involvement in World War II was just while Germany's involvement was unjust. This illustrates that the justness of a war is a judgment of a nation's justification for a war, specifically its decision to employ its military force.

McMahan argues that wars can be just on at most one side but unjust on both. He does not make his evaluative criteria for the justness of a war available, nor does he use any historical examples to support his argument that most wars are unjust. It is plausible

to suppose, then, that McMahan's evaluative criteria for the justness of war is based on the *a priori* theory of probability. On such a view, "all that is required [to determine the justness of a war] is knowledge of the antecedent conditions."⁶ In this case, the antecedent conditions are (1) a war can be just on at most one side, and (2) a war can be unjust on both sides.

The probability of an unjust war occurring in given circumstances is computed by "divid[ing] the number of ways in which it can occur by the total number of possible outcomes."⁷ Therefore, McMahan is suggesting that when we consider the probability that a war will be unjust, in a war between two nations, there are three possible combinations, which may be listed as follows:

Just – Unjust
Unjust – Just
Unjust – Unjust

Thus, the *a priori* probability of a war being unjust is $\frac{4}{6}$ or $\frac{2}{3}$.

There are considerable problems with using *a priori* probability to establish the likelihood that a war will be unjust. First, McMahan rules out the possibility of a just war on both sides. I can easily imagine two scenarios where each side would be justified in resorting to war. Consider an unpopulated, previously unclaimed piece of land. Presumably, one nation would have no greater claim to that land than any other nation. Further, if both nations laid claim to that land at the same time, each would be justified in

⁶ Irving M. Copi and Carl Cohen, Introduction to Logic, 8th ed. (New York: Macmillan Publishing Company, 1990) 461.

⁷ Copi and Cohen 461.

thinking it was justifiably theirs. If war were imminent, and it is likely that it would be, then each nation would be fighting a just war. Consider another scenario in which a nation (N_1) is consummately skilled in deception. N_1 's skills of deception can cause one nation (N_2) to justifiably believe that a second nation (N_3) has committed acts that justify the resort to war. Plausibly, then, N_1 can cause N_3 to justifiably believe that N_2 has committed acts that justify the resort to war. If war were imminent, and, again, it is likely that it would be, then each nation would be fighting a just war. Thus, it seems, there are *at least* two plausible scenarios in which two nations would be justified in resorting to war against each other. Because there are at least two plausible scenarios in which two nations would be justified in resorting to war against each other, McMahan cannot rule out the possible combination of 'Just – Just' when considering the probability that a war will be unjust, in a war between two nations. Instead of there being three possible combinations, there are four, and they may be listed as follows:

Just – Just
 Just – Unjust
 Unjust – Just
 Unjust – Unjust

Thus, the *a priori* probability of a war being unjust is $\frac{4}{8}$ or $\frac{1}{2}$, and likewise for the *a priori* probability of a war being just.

The first problem, then, with McMahan's use of *a priori* probability to establish the likelihood that a war will be unjust, was that he helped himself to an assumption that advanced his case, *viz.*, that a war can be just on at most one side. There is clear evidence that such an assumption is illegitimate. The second problem is that an *a priori* probability

is useful “provided there is no reason to believe that any one of those possible outcomes is more likely than any other.”⁸ Consider the coin-toss example. Each time a coin is tossed in the air, the possibility that it will land heads is the same as the possibility that it will land tails. Specifically, then, the four possible combinations used to assess the *a priori* probability that a war will be unjust, in a war between two nations, are, necessarily, equipossible. But, it seems, equipossible events must be characterized by *randomness*. I assert, with clear conviction that McMahan would agree, that war is *not* an event characterized by randomness. It is, rather, an *intentional* event. Intentional events are characterized by practical deliberation. There is room to disagree about the quality of that deliberation, with respect to a given nation. There is also room to disagree as to whether or not the results of a nation’s deliberation justify the resort to war. However, there can be no disagreement that *any* nation’s decision to resort to war is characterized by deliberation, so wars are intentional, not random. Because wars are intentional and not random, they cannot be evaluated, with any degree of accuracy, by *a priori* probability.

With respect to the purposes at hand, McMahan’s claim that most wars in which people fight are unjust cannot be substantiated by *a priori* probability, therefore his argument does not give the US soldier any reason to think that any future war is more likely to be just than unjust. Nonetheless, the *possibility* that any future war will be unjust

⁸ Copi and Cohen 461.

cannot be ruled out, so the troublesome concerns raised by McMahan for anyone who desires to serve in the military and also desires to live a morally just life are still valid. As such they bear thoughtful consideration.

McMahan, I take it, reasons in the following way. It is likely that military service is unjust, and it is likely that the soldier is, or will be, unjust. Perhaps he thinks that it is likely that the soldier is, or will be, unjust *because* it is likely that military service is unjust. When wars are unjust, the conduct of the soldiers in the war is also unjust by an additional argument of his. He says that

if the individual soldier has reason to believe or suspect that his country's war is unjust, this is equivalent to believing or suspecting that his action as a belligerent in the war is or would be murderous. If he is convinced that the war is unjust, then he must not participate.⁹

The question then is whether or not McMahan thinks that someone who joins the military, or who is already a member of the military, is necessarily committed to unjust actions. I do not think so. He draws a clear distinction between a person *simpliciter* and a person *qua* soldier, that is, the soldier's unjustness is necessarily tied to actions that support what is unjust. To clarify then, his reasoning is that because it is likely that military service is unjust, it is therefore likely that that someone who joins the military (or who is already a member of the military) will be unjust *qua* soldier. A person is unjust *qua* soldier when his action(s) support what is unjust about military service, namely, unjust war. It does not

⁹ McMahan, "Innocence, Self-Defense, and Killing in War," 209.

necessarily follow that an unjust person *qua* soldier is also an unjust person *simpliciter*. Presumably, the determination that a person *simpliciter* is unjust is more encompassing, and while it would include his actions *qua* soldier, it might also include his actions *qua* son, *qua* neighbor, *qua* adult, and so on. Nonetheless, McMahan is correct when he writes that if the soldier is convinced that war is unjust, then he must not participate. It is my aim to elucidate what this *conviction* must amount to in order for the soldier to be both morally and legally justified in judging a war unjust and subsequently refusing to participate.

Perhaps ironically, it is precisely because wars are *likely* to be unjust that a nation establishes and maintains a military force. The likelihood of a war being unjust in no way entails that war is always unjust. A nation could plausibly reason that it might be attacked unjustly. Even McMahan would agree that one nation's unjust attack on another nation does not make it necessary that a military response from the nation under attack would be unjust. Even if it is resolved to conduct its national and international affairs in a just fashion, there is still strong support for establishing and maintaining a military force. The plausibility of being attacked unjustly is strong support.

Presumably, even McMahan would think joining the military is morally permissible if the soldier *could not* be used as an instrument of injustice. What I intend to offer is not the stronger argument that a soldier cannot be used as an instrument of injustice. It is sufficiently strong to answer how it can be morally permissible to voluntarily join the

military. I will show that the US soldier can serve and be morally responsible, because he has the right and responsibility to determine the justness of a war. Additionally, I will argue that the soldier can fight justly in a war where justness is not known.

To establish the soldier's right and responsibility to determine the justness of war, I will first explicate and evaluate how the justness of a war is determined for modern-day soldiers within the context of Aquinas' Just War Theory. I will argue that this is a context in which the soldier can properly evaluate the justness of a war.

The determination of the justness of a war is inherently complex for the soldier. I will explicate what the complexity amounts to and will investigate the moral implications of determining either that a war is just, unjust, or of undetermined justness. Presumably, fighting justly in a just war is morally acceptable. Conversely, fighting in an unjust war is always unjust. It is also the case that the soldier can be called to fight in wars where justness is not known. The facts used to make determination of justness are often unclear until long after the fighting has started. In wars where the justness of a war is not yet determined, I will draw on the distinction between *jus ad bellum*, the justice of war, and *jus in bello*, justice in war, to argue that soldiers can and should fight justly.

My argument will refute McMahan's assertion that "in joining the military, one allows oneself to become an instrument for the violent pursuit of purposes that are more than likely to be unjust"¹⁰ in the following two ways. First, in joining the military, it is not

¹⁰ McMahan, "Innocence, Self-Defense, and Killing in War," 207.

the case that the soldier is *allowing* himself, viz., abdicating his moral responsibilities, to become an instrument for unjust violence. Second, instead of engaging in violence *likely* to be unjust, the soldier who properly exercises his rights and meets his responsibilities, one of which is determining the justness of war, can and should act justly. This is a strong argument that military service, properly understood, is morally permissible.

SECTION 3

THE SOLDIER'S *RIGHT* TO DETERMINE THE JUSTNESS OF A WAR

The United States is a democracy; a form of government founded on the ideal that the power of the government comes from the people. As members of a democratic nation, where law-abiding citizens over the age of 18 have a right to vote for the President/Vice President and their Congressional representatives, we think that individuals have the right to question decisions made by those elected leaders. In this respect, democracy is a participative form of government. This right to question is representative of the importance the founding fathers placed on individual freedoms and incorporated into the Constitution and the Bill of Rights.

The soldier has taken an oath to support and defend the Constitution with his life, so it is plausible to think that he ought to have the same rights as other law-abiding citizens of a democracy. There is, though, some basis for the belief that the group-oriented nature of the military conflicts with the individual rights of citizens of a democracy. Alexis de Tocqueville, as represented in Philip Flammer's article "Conflicting Loyalties and the American Military Ethic," addressed the conflict between the nation and its military by commenting that "[t]he nation and the army have 'opposite tendencies'

which 'expose democratic communities to great dangers.'"¹¹ In his commentary on de Tocqueville, Flammer writes that "[t]he 'opposite tendencies' between a political democracy and its armed forces are obvious. The former is oriented towards the individual with emphasis on personal freedom. ... The military, on the other hand, is necessarily group oriented with strong emphasis on rigid discipline and obedience."¹² The very natures of democracy and military service are in opposition to each other and therefore cause conflict. This conflict manifests itself in each soldier, since as a member of a democratic society, he has the right to question a war, but as a member of the military, it seems he has no such right. McMahan also highlighted this conflict when he suggested that people who join the military are typically aware that an abdication of moral autonomy is a condition of military life.

Even though there is this apparent conflict between a democracy and the military, there is a proper relationship between the two that is rooted in the US Constitution. The soldier remains a citizen of a democracy first and a soldier second - that is, he still retains the individual rights he has sworn to defend with his life.

The conflict between a democracy and the military does result in a limitation on the soldier's rights, but it does not deny him those rights. This limitation is not markedly different from that of citizens who are not in the military, because an individual right does not entail a right to exercise that right without restriction. There is a point at which a right

¹¹ Philip M. Flammer, "Conflicting Loyalties and the American Military Ethic," War, Morality, and the Military Profession, ed. Malham M. Wakin (Boulder: Westview Press, 1986) 157.

¹² Flammer 157-158.

loses the protection of its parent document, and in losing this protection, it is limited. For example, one of the rights of every citizen is the right to free speech. If having this right entailed a right to exercise it without limitation, then there would be nothing wrong with someone standing up in a crowded movie theater and yelling "Fire!" when there was no fire. Supreme Court Justice Oliver Wendell Holmes, Jr., established the *clear and present danger* test to define the point at which speech loses the protection of the First Amendment.

The character of every act depends upon the circumstances in which it is done. ... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic. ... The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the Congress has a right to prevent.¹³

He is saying, then, that there is a sense in which the right to free speech is always limited, because even the strongest protection of free speech would not protect a man who yells "Fire!" in a theater when there is no fire. Hence, all Americans accept a degree of limitation on their right to free speech. Presumably, there are similar limitations on all of the rights granted by the Constitution and the Bill of Rights.

Just as the right of citizens to free speech is limited by the *clear and present danger* test, the soldier's rights are limited to the extent necessary to ensure military good order and discipline. These limitations are accepted and upheld as necessary for the support of good order and discipline upon which military service is founded. One such

¹³ Schenk v. United States. 249 U.S. 47, 39 S.Ct. 1919.

limitation a soldier accepts, with respect to the right to question a war as unjust, is that this determination must be properly made within the military framework. Nonetheless, though limited, the soldier has a right to determine the justness of a war.

I set aside the mechanics of such a determination for now, in order to establish that the soldier also has a responsibility for determining the justness of a war, in addition to the right to make this determination. I will return to the mechanics of a determination whether or not a war is just in Section 5.

SECTION 4

THE SOLDIER'S *RESPONSIBILITY* TO DETERMINE THE JUSTNESS OF A WAR

Presumably everyone, soldier or civilian, has a responsibility to live a morally just life. It is the nature of responsibility that it never completely disappears; a responsibility can be ignored, but it cannot be avoided. Hence, even if, as McMahan suggests, the soldier joins the military to enjoy the freedom from (moral) responsibility, the soldier is never completely relieved of his responsibility to live a morally just life.

The soldier is an instrument of violence, that is, he is trained and equipped to achieve objectives. The accomplishment of these objectives may include killing other people. As presented in Section 2, McMahan argues that as an instrument of violence in an unjust war, the justness of his actions would correspond to the justness of the war. He advances the claim that if a war were unjust, then the soldier's actions would be murderous. He makes the connection between an unjust war and the soldier's unjust actions a *necessary* connection, that is, the unjustness of the war and the unjustness of the soldier's actions in support of the war cannot be separated.

Even McMahan allows that there is at least some possibility that some wars can be just, and it is in a just war that the justness of a war can be separated from the justness of

the soldier's actions in support of it. Consider a theoretically just war that the soldier knows is just before he is called to fight. If, after that soldier is called to fight, he goes into a village of unarmed, indigenous people comprised of old men and women, young women, and children, and kills them though they have not endangered his life in any way, we are likely to consider his actions murderous and unjust. We are also likely to insist that he be tried as a war criminal. In thinking this way, we have pried apart the justness of the war and the justness of the soldier's actions in support of it.

Historically, there have been attempts to reconcile the nature of warfare with the morality of the soldier's conduct in a war. The most prominent attempt is that of St. Thomas Aquinas in his work, Summa Theologiae. There was a further distinction drawn with respect to war that also typified the medieval period in which Aquinas worked. In Just and Unjust Wars, Michael Walzer writes, "Medieval writers distinguished *jus ad bellum*, the justice of war, from *jus in bello*, justice in war."¹⁴ *Jus ad bellum* determinations require adjectival judgments about the war: Is it just or unjust? and Is it an act of aggression or of self-defense? This is the first key decision the soldier must make, and it is made on the evidence available to the soldier. *Jus in bello* determinations require adverbial judgments about the war: Is it being fought justly or unjustly? When at war, the soldier continually evaluates whether the war is just or not based in the evidence available

¹⁴ Michael Walzer, Just and Unjust Wars, 2nd ed. (United States: Basic Books, Inc., 1992) 21.

to him. With the exception of considering the following of orders (which is both a *jus ad bellum* consideration, with respect to the order to go to war, and a *jus in bello* consideration), I will not address other *jus in bello* considerations.

To this point, and with respect to the relationship between the justness of a war and the justness of the soldier's actions in support of that war, I have asserted the following. First, if a war is unjust, then the soldier's actions are murderous because the soldier's actions in support of that war and the unjustness of the war cannot be separated. Second, if a war is just, then the soldier's actions can be just because the justness of the war can be separated from the justness of the soldier's actions in support of it because of the *jus ad bellum/ jus in bello* distinction. It is also the case however, that the soldier can be called to fight in a war where justness is not known because the facts used to make the determination of justness are often unclear until long after the fighting has started. In wars where the justness of a war is not yet determined, it is arguably true that the soldier can and should fight justly. In such cases, the morality of the soldier's actions would be judged, that is, if he justly carried out lawful orders and refused to carry out unlawful orders, then he has fought justly and met his moral responsibilities.

The soldier is never completely relieved of his responsibility to live a morally just life, and it is not always possible to separate the justness of the soldier's life from the justness of a war. If a war is unjust, then the soldier's actions in support of it would be murderous. It is also because the nature of a just war and the nature of a war where

justness is unknown can both change to unjust that a soldier has a responsibility to continually evaluate the justness of a war if he is to preserve his morality. Thus, the soldier has a responsibility to judge the justness of a war.

SECTION 5

HOW THE SOLDIER OUGHT TO DETERMINE THE JUSTNESS OF A WAR

In Sections 3 and 4, I argued that the soldier has a right and a responsibility to judge the justness of a war. He has a right because he is a US citizen first and a soldier second. He has a responsibility because he is a human being, and human beings have a responsibility to live a morally just life. Because the soldier has both a right and a responsibility for judging the justness of a war, he decides *when* he is going to fight. Thus, there is no necessary connection between joining the military and becoming an instrument of unjust violence.

Even if McMahan would acknowledge that my argument is theoretically plausible, he could object that it is practically implausible, that is, while the soldier theoretically has both a right and a responsibility to judge the justness of a war, neither could be exercised within the military framework without severe penalty. After all, military service demands group-orientation, strict adherence to orders, and respect for authority. I have justified the right and responsibility to judge the justness of a war by appealing to the rights and responsibilities of an individual. McMahan, as critic, might think that the soldier who exercised either in a rigid framework that is group-oriented by necessity would surely find

himself expediently dismissed from military service. By this line of thinking, military service and individual morality are mutually exclusive. Hence, there is no practical sense in which the soldier can be said to make a moral determination of when he is going to fight. My aim in this section is to assuage such doubt. I will show that the soldier can make the *practical* determination of when to fight and how doing so is consistent with the demands of military service.

In Section 3, I set aside the mechanics of the soldier's determination of the justness of a war to establish that the soldier also has a *responsibility* for making this determination in addition to a *right* to make it. I now return to the mechanics of making a determination whether or not a war is just. It is plausible to use Aquinas' Just War Theory,¹⁵ because it provides necessary conditions for the justness of war.

Aquinas delineated three necessary conditions for a war to be just. The first necessary condition requires that the decision to go to war must be the result of

the authori[zation] of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek for redress of his rights from the tribunal of his superior. Moreover, it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers,...so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies.¹⁶

¹⁵ While Aquinas' Just War Theory founds the work of modern just war theorists, many, including McMahan, have expanded the *jus ad bellum* conditions for a just war to include Proportionality, Last Resort, and Reasonable Hope of Success. My project, as is, is thus incomplete, because I do not consider these further conditions.

¹⁶ St. Thomas Aquinas, "Summa Theologiae, IIaIIae q. 40 art. 1 corp.," trans. Fathers of the English Dominican Province (Benzinger Brothers Inc., 1947), online, New Advent Catholic Website, Internet, 3 Dec 98.

Aquinas did not conceive of the declaration of war as an individual endeavor, that is, war is not the business of an individual (*qua* member of a nation), because that individual can appeal to a higher authority when disputes need to be settled. But within the United States' system of government, there are individuals in higher authority, including the sovereign, who have *community* responsibilities above and beyond those of an individual. One such responsibility is protecting the common welfare of the people who inhabit the nation. When settling disturbances between individuals within the nation, the sovereign and those in higher authority are the only ones justified in forcibly punishing one who has committed wrongs against another. It follows, then, for Aquinas, that a sovereign and those in higher authority who act to protect the nation must authorize the use of force against external wrongdoers if the use of force is to be justified.

Aquinas' first necessary condition for a just war corresponds to the modern notion that a declaration of war must be made by the President and the Congress (in the United States). While the President, *qua* Commander-in-Chief, can order the limited engagement of military force, he must seek the concurrence of the elected officials who serve in Congress if military force is to be engaged in conflict for more than 60 days. This partnership fulfills the intent of the framers of the Constitution of the United States to ensure that the collective judgment of the Congress and the President is applied in the introduction of military force into hostilities and for any prolonged use of military force. It also fulfills Aquinas' intent that a declaration of war must be made by the authority of the person or persons responsible for the welfare of the nation.

Aquinas' second necessary condition for a just war is a just cause. He writes that

[a] just cause is namely that those who are attacked, should be attacked because they deserve it on account of some fault. Wherefore Augustine says: "A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly."¹⁷

For Augustine, the likelihood that a war is just is tied, in part, to the avenging of a wrong committed by another nation.¹⁸ Once there is a compelling reason to punish a nation, then another nation is justified in taking up arms against it. For example, though a nation might not be under direct attack, it can be justified in declaring war on another nation whose actions threaten its way of life. Consider the US involvement in Vietnam. It was the considered opinion of the National Command Authority, the President and the Secretary of Defense, that if South Vietnam fell victim to communism, a similar fate would soon follow for all of the other nations of Southeast Asia. Widespread communism in this region of the world would threaten the United States' democratic way of life. Just as a threat to a nation's way of life can be a just cause for war, there is also a sense in which one nation is justified in punishing another (by declaring war) solely because the offending nation has committed a wrong. Consider the US involvement in Desert Storm. Iraq invaded and occupied Kuwait. While this was not a direct attack on the United States, we did think that Iraq had seized Kuwait unjustly. Aquinas' second condition, specifically the

¹⁷ St. Thomas Aquinas, "Summa Theologiae, IIaIIae q. 40 art. 1 corp.," trans. Fathers of the English Dominican Province (Benzinger Brothers Inc., 1947), online, New Advent Catholic Website, Internet, 3 Dec 98.

¹⁸ Presumably, there is no need to justify a self-defensive war.

reference to Augustine, justified the United States in declaring war on Iraq for this reason alone: Iraq's seizure and occupation of Kuwait was unjust and the Iraqi government refused to make amends for this wrong. Hence, a wrong had to be avenged. I am using "avenged" in the same sense I think Augustine uses it: punishment commensurate to a wrong. I am not suggesting that there might have been an element of extreme degree, *viz.*, a desire for cruelty, behind the US involvement in Desert Storm.

Aquinas is more lenient than Augustine, because Aquinas does not require that one nation must commit a wrong act against another nation in order to justify an attack. He says that the people who are attacked need only deserve it because of some fault. A *fault* differs from a *wrong* in that a wrong must be realized, that is, it must be the result of action, while a fault need only be present yet have the potential for realization. Because a fault does not have to be the result of action, there is justification for preemptive wars within Aquinas' Just War Theory. The objective of a pre-emptive war would be to diminish or eliminate a threat posed by another nation with *threat* cashed out as the potential realization of a fault.

The individual soldier's decision as to whether or not a war has a just cause can only be made by considering all the pertinent facts. It is the case that few soldiers, if any, are in a position to determine these facts, as I will show. In most cases, just cause is determined instead by a soldier's belief set. I will discuss the contents of the belief set and how beliefs and facts are determined later in this section.

Aquinas' third necessary condition for a just war is

that the belligerents [must] have a rightful intention, so that they intend the advancement of good, or the avoidance of evil. Hence Augustine says: "True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good." For it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered unlawful through a wicked intention. Hence Augustine says: "The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war."¹⁹

If war is declared for morally worthy reasons, *e.g.*, protecting people from religious persecution, then it is just. If, on the other hand, war is declared purely to harm others, to cruelly seek revenge, or for power, then it is no longer just by Aquinas' standard.

As a *jus ad bellum* condition, I interpret *all belligerents* to mean *those directly involved in the declaration of war*. This seems more correct than to interpret *all belligerents* to mean *all individuals contributing toward the war effort, both soldier and civilian* because Aquinas makes it clear that a war declared by the sovereign and with a just cause could be rendered unjust through wicked intention. It is unclear that the soldier who had an evil intention yet had no input into the declaration of war could make that declaration necessarily unjust. The only soldiers who could bring evil intentions to bear on the declaration of war would be those who were directly involved in the decision to

¹⁹ St. Thomas Aquinas, "Summa Theologiae, IIaIIae q. 40 art. 1 corp.," trans. Fathers of the English Dominican Province (Benzinger Brothers Inc., 1947), online, New Advent Catholic Website, Internet, 3 Dec 98.

declare war. As the US military system is subordinated to the civilian leadership of the government, there is a very important sense in which the civilians in these positions of leadership who influence the declaration of war must also have proper intentions. Their intentions cannot be excluded from Aquinas' third condition when these civilians are directly involved in a declaration of war. As with the soldier who is so involved, they become belligerents. All of Aquinas' conditions for just war are *necessary* conditions, that is, if one or more of the three conditions is not met, then a war is necessarily not just. Because the third condition applies to all individuals involved in the declaration of war, it is plausible to question whether the wrongful intention on the part of one individual would make a war unjust. Proper treatment of this question for a specific individual would have to consider the degree of influence the individual's improper intention had on others also involved in the declaration of war and on how many others. It would be difficult for the soldier to determine the degree of influence an individual's improper intentions had on others, and it would likewise be difficult to judge an individual's intentions if they remained private. Thus, there is a sense in which Aquinas' third condition is more theoretical than practical. It can still of some practical use to the soldier, and therefore he needs to bear it in mind.

The soldier who uses Aquinas' Just War Theory to decide the justness of a war ought to be mindful of a distinction between *intending* and *doing*, to ascertain whether or not Aquinas' third condition is met when intentions remain private. While having good intentions ought to facilitate doing what is just, it is not the case that wrongful intentions necessitate that what a person does is unjust. Specifically with respect to a war, the

intentions of those declaring war could be wrong in that they intend to cruelly punish another nation that has wronged them. While this might be their intention, it is still possible for them to stop short of the cruelty that would make a war necessarily unjust and in this way, preserve the war's just cause. What the belligerents do becomes more important than what the belligerents intend, for the soldier who is judging their intentions with respect to the justness of a war.

Outlined in simpler form, Aquinas' three necessary conditions for a just war are:

1. It must be authorized by the sovereign.
2. It must be undertaken for a just cause.
3. The intentions of the individuals, soldiers and civilians, taking part in the decision to declare war should be good.

The US soldier who applies Aquinas' Just War Theory can usually easily determine whether or not a war is authorized by the President *qua* Commander in Chief. An abundance of news coverage ensures wide dissemination of such an authorization, as it is the nation that goes to war and not just the military. Even if there is no public dissemination of the President's authorization, it is transmitted via order to the soldier. I will elaborate on concerns about the justness of this kind of authorization when I delineate the soldier's belief set. For now, suffice it to say that Aquinas' requirement that a just war must be authorized by the sovereign can be clearly determined by the soldier.

Just cause, the second of Aquinas' conditions, is a very complex determination, because it is properly determined only by considering all the pertinent facts. Making the

decision that a war has a just cause is complicated by what can be known and by whom. I will argue that it is only at the highest level of the military hierarchy, the strategic level, that the pertinent facts are likely to be available.

There are three levels at which war is waged: strategic, operational, and tactical. By way of simplistic illustration, think of the *strategic* level as the level at which national objectives are determined. Decision-makers at this level decide what the nation needs to accomplish using all of its instruments of power. Soldiers, strategists, and the civilians who are leaders of the political, social, economic, and military communities determine, at this level, *what* they want to happen in the war.

Objectives determined at the *operational* level concern a specific community and how accomplishment of its objectives will dovetail with the objectives at the strategic level and provide support for them. With respect to the military, this level has a commander-in-chief and a defined area of responsibility.²⁰

At the *tactical* level, soldiers determine *how* specific objectives are going to be accomplished in support of operational objectives. A majority of soldiers operate at this level during a war. Thus, just cause is properly determined by considering the pertinent facts, yet most soldiers would not have easy access to those facts because of the level of war at which they operate.

McMahan correctly asserts that the reasoning that leads the higher authorities to decide to go to war and to fight the war in a certain way is generally not made accessible

²⁰ Using Desert Storm as an example, think of General Schwarzkopf as the operational leader.

to ordinary soldiers. But, he also erroneously suggests that soldiers are often *lied* to about the real purposes of war. His suggestion implies, first, that there are reasons for war, which the soldier should have access to, that are deliberately withheld or obviously obscured. It also implies that there is no good reason for this information to be withheld or obscured. And it further implies that the primary reasons for sending the soldier to war are unjust yet are disguised behind justified reasons, and it is only the justified reasons that are made available to the soldier.

Intelligence sources and the facts they are responsible for that would lead the US to go to war are rigorously guarded in the interest of national security. Dissemination of this information is on a *need to know* basis. A soldier would have a *need to know* if his not knowing jeopardized his ability to successfully accomplish his assigned objectives in support of a war. And again, objectives are a function of the level of war at which the soldier is fighting.

To illustrate the relationship between the soldier and his need to know, consider the case in which the US has good reason to suspect that a rogue nation intends to release a deadly amount of poisonous gas into a New York subway. Any soldier called to attack this rogue nation is not likely to be given this information because his not having this information would not jeopardize his ability to successfully accomplish his assigned objectives in support of a preemptive strike of this rogue nation, and it is in the best interest of the US populace that this information not be released, as widespread panic is likely to ensue. Hence, the soldier called to attack would not be given all the pertinent facts which justify sending him into the fray, but it is not the case that withholding this

information is clearly lying either. The connection between withholding information and lying is not the logically necessary connection McMahan relies on to support his claim that soldiers are often or even typically lied to about the real purposes of wars.

It is also not the case, however, that sensitive information, *e.g.*, a rogue nation intends to release a deadly amount of poisonous gas into a New York subway, would not be available to *any* US soldiers. It would be available to those at the strategic level of war, because they would have a need to know. Their need to know is a necessity because they would be responsible for planning not only preemptive operations but also emergency operations to mitigate the worst-case scenario in which the enemy attack succeeded. In extreme scenarios like these, there are likely to be at most ten soldiers who can make the determination of just cause based on facts.²¹

The likelihood that even ten soldiers would know the pertinent facts is probably too generous an estimate in other extreme scenarios. Reviewing the requirements in Title 10 of the United States Code that contains the laws in force for the US armed forces suggests why. Title 10 reads:

Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs from the President to the Secretary of Defense; and from the Secretary of Defense to the commander of the combatant command.²²

As I have represented the levels of war, the President and the Secretary of Defense would be at the strategic level, and the commander of the combatant command would be at the

²¹ The President, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Vice Chairman, the four Chiefs of Staff for each service, and few others.

²² 10 USC. Sec 162b. 1996.

operational level, so in this scenario, there need only be one person who knows all the pertinent facts to determine whether a war has just cause, and that is the President. While the Chairman of the Joint Chiefs of Staff is the primary military advisor to the President, there is no legal requirement for the President to ask for his advice. Hence, it is both possible and legal for the soldier to be ordered into a conflict with a just cause when only the President has the facts to make a determination of just cause.

It is plausible to think that the soldier might be able to rely on the same abundance of news coverage that ensures wide dissemination of the President's authorization of a war to determine whether or not there is just cause for the same war. After all, when making his authorization known, the President usually offers justification for employment of the military instrument. Hence, the soldier could evaluate the requirement for just cause based on the public statements of the President.

Because of the possibility of an extreme scenario, one in which relevant information is withheld to avoid widespread panic, the soldier cannot depend on the public statements of the President to establish just cause. In extreme scenarios, some of the pertinent facts needed to determine just cause would be withheld and would be unavailable to the soldier as I have argued. The question then becomes whether or not the soldier can *know* a scenario is extreme. It is apparent that he cannot. Hence, he ought not to assume that he has all the pertinent facts to determine whether or not a war has just cause. Because the pertinent facts needed to make a proper determination of just cause are often unavailable to the soldier, just cause is determined by his belief set.

The military within the United States is, at present, an all-volunteer force, so it is a matter of individual volition whether or not someone serves in the military. Thus, it is not likely that those who are amilitary, anti-war, or anti-American would volunteer for military service. Presumptively, deciding to serve concerns at least the following reflective decisions, and these decisions comprise the soldier's belief set: (1) the government is just; (2) a military force is necessary; (3) the exercise of military force is sometimes necessary, and (4) military service is just. If a soldier has not reflectively considered these tenets, he is certainly encouraged to do so within the course of his professional development both by formal and informal means. The military institution insists on this reflection precisely to preclude confusion and conflict within an individual soldier when war is declared. This insistence ensures (as much as possible) few or no conscientious objectors.

The first belief in the soldier's belief set is the belief that the US government is just. The belief that a democratic form of government is just is something each person has been introduced to and familiarized with in the course of normal schooling. Underlying the justness of a democratic system is the Platonic notion that a democracy "distributes a sort of equality to both equals and unequals alike."²³ In addition to offering equality to each person, democracy is thought to be the best option for establishing a government of equal representation for the individual. Necessarily, we have elected officials to make that representation more effective. Nonetheless, we recognize that these elected officials are no less likely to have human fallibilities, so the democratic system is one of checks and

²³ Plato, Republic, trans. G.M.A. Grube, revised by C.D.C. Reeve. (Indianapolis: Hackett Publishing Company, 1992) 558c.

balances. These checks and balances minimize the potential for damage when mistakes are made. Every American ought to know at least this much about democracy and therefore ought to have confidence in the just nature of the government. The military soldier is no exception.

Living in a democracy founded on equal representation and checks and balances can serve to allay fears that the President *qua* Commander in Chief can, with evil intention, commit the soldier to participation in an unjust war. Should the President attempt to do so and should his attempt become public, he is likely to be challenged by members of Congress. As such, any concerns the soldier might have with respect to Aquinas' three necessary conditions for a just war are likely to be raised by his congressional representatives. Thus, it is not the case that the soldier's concerns would have no voice.

It is possible to imagine a case in which the soldier gets his order to go to war, in the broad sense that I defined in Section 1, directly from the President *qua* Commander in Chief. If the order were such, it is plausible to assume that he is the only one with the *need to know*. Thus, his situation would demand that he forego the prior reassurance that the order is just which I have suggested is part of a system of checks and balances. In lieu of this reassurance, the belief that the government is just must at least be replaced by the belief that the President's order is just and, ideally, that the President is just. The integrity and trust that bolster the belief set would have to pick up the slack in order to establish the justness of the war. I will elaborate on this trust and integrity shortly, but first I will finish depicting the belief set.

In addition to believing that the US government is just, the soldier also believes that a military force is necessary. This second belief is part of the soldier's belief set, and the belief set provides support a war's just cause when it is not possible for the soldier to make the determination of just cause based on the pertinent facts. It is plausible to think that the soldier believes a military force is necessary by considering the words of Sir John Winthrop Hackett who writes that

[u]ntil man is a great deal better than he is, or is ever likely to be, the requirement will persist for a capability which permits the ordered application of force at the instance of a properly constituted authority. The very existence of any society depends in the last resort upon its capacity to defend itself by force.

"Covenants without swords are but words," said Thomas Hobbes 300 years ago. This is no less true today. Government thus requires an effective military instrument bound to the service of the state in a firm obligation.²⁴

Hackett's position advocates the establishment and maintenance of a military force to serve and preserve the state. Not only should the state create and maintain a military force, it must do so as a matter of necessity due to the very nature of mankind. If the state is to survive and to thrive, then a standing military is required to protect it because it is not in the nature of mankind, at least presently, to co-exist nonviolently. And this is why the soldier believes a military force is necessary.

The soldier's third belief in his belief set is that the exercise of military force is sometimes necessary. Walzer argues for this point when he writes that war "cannot be escaped, short of a universal order in which the existence of both nations and peoples

²⁴ Sir John Winthrop Hackett, "The Military in Service of the State," War, Morality, and the Military Profession, ed. Malham M. Wakin (Boulder: Westview Press, 1986) 105.

could not be threatened. There is every reason to work for such an order. The difficulty is that we sometimes have no choice but to fight for it."²⁵ According to Walzer, war cannot be avoided because we live in a world where people and nations threaten each other. While it may be desirable to work toward a world of peaceful co-existence, attaining it might also require us, ironically, to battle for it. Thus, in order to establish and maintain a sovereign state, people will likely be forced to both fight for it and defend it. A nation that chooses to establish and maintain a military force is openly committing to its ideals and choosing to be prepared to defend them. Thus, the soldier believes, the exercise of military force is sometimes necessary.

With respect to the preservation of a nation, the exercise of military force need not always be self-defensive. A nation has several instruments of power at its disposal and military force is only one of those instruments. There are also political, social, and economic instruments. There are certainly conceivable scenarios in which a nation might not be under direct military attack but might be justified in employing its military force to combat threatening political, social, or economic attacks from another nation. Hence, a soldier also believes that both the offensive and defensive exercise of military force is sometimes necessary.

In addition to beliefs that (1) the government is just, (2) a military force is necessary, and (3) the exercise of military force is sometimes necessary, each soldier must believe that military service is just. The military is a hierarchical society, so the soldier's

²⁵ Walzer 327.

ability to act justly is related to his autonomy within a system where part of his job is to follow orders. If military orders were always just, then there could be no question that military service is just. Nonetheless, there are situations when orders given are illegal or immoral. In such situations, the soldier knows that he cannot be forced to do something that is morally wrong. I will expand this argument in my discussion of military orders. For now, suffice it to say that if each soldier is responsible for the just or unjust nature of his actions, then he controls the nature of his military service. As it is the case that he exerts the ultimate control over his intentions and actions, then he can plausibly believe that his military service is just if he thinks and acts justly.

The integrity and trust between the soldier and his superiors bolster a soldier's belief set. They engender greater confidence in his beliefs that the government is just and that military service is just. Integrity and trust are transmitted via the chain of command from the very top, the Commander in Chief, to the lowest ranking soldier, so they permeate civil-military relationships as well as military relationships. As the soldier is exposed to the integrity of the people in his relationships, he learns to trust them. Trust engenders his confidence in them and thus in the organizations they comprise, *viz.*, the government and the military.

It is important to understand that integrity and trust can be transmitted via the chain of command from the very top, the Commander in Chief, to the lowest ranking soldier. I am not prepared to defend this claim, but I think it is true nonetheless. The transmission of integrity and trust becomes critical to scenarios like the one I presented earlier in which the soldier gets his order to go to war directly from the Commander in

Chief. The soldier's belief that the government is just would be of little reassurance to the soldier because the system of checks and balances is circumvented. His belief that the government is just must at least be replaced by the belief that the President's order is just and, ideally, that the President is just, if he is to have the strongest support afforded by his belief set for the war's just cause.

While superior-subordinate relationships are characteristic of the military environment, giving and receiving orders are characteristic of these relationships. It is in the giving and receiving orders that the elements of integrity and trust play critical roles.

With respect to these qualities, Michael Wheeler writes that

[i]n the United States today, the young officer or enlisted man who is beginning his military service comes from a society whose values do not support the rigidly conceived notion of discipline. That is to say, discipline is not valued for discipline's sake. The young American is attuned to questions concerning morality and war. He expects to be given a reason when told to do something. He does not always accept established traditions without question. He is often suspicious of bureaucracy and its ways. He is, in short, the type of person who leads respected military writers to say that "the gap between the values held by a large percentage of American youth and those required for effective military service is probably larger today than ever before." ... He or she recognizes a man of integrity and can be inspired to trust such a man. This trust can serve to close the gap between the values of the soldier and his commander, for trust creates a sympathetic attitude and a propensity to obey.²⁶

Wheeler's comments importantly point out that contrary to the stereotypical military paradigm, the soldier of today is full of questions and is reluctant to obey orders without being given a reason or appropriate justification. The soldier does not regard his superiors

²⁶ Michael O. Wheeler, "Loyalty, Honor, and the Modern Military," War, Morality, and the Military Profession, ed. Malham M. Wakin (Boulder: Westview Press, 1986) 177-178.

as people of integrity or as being trustworthy by mere whim. Such qualities of character must be consistently demonstrated before the soldier grants his personal respect to the bearer, because knowing when to obey is often the difference between who lives and who dies, not just in combat but in everyday peacetime operations. Fears that he will (or must) blindly obey an order to participate in an unjust war are thus allayed because there is a sense in which his obedience, especially obedience to life-threatening orders, is earned not demanded.

The soldier's belief set was introduced to establish that he can *know* that a war has a just cause even when he does not have access to all the pertinent facts which, in fact, establish that war's just cause. In his book Warrant: The Current Debate, Alvin Plantinga defines *warrant* as "whatever precisely it is, together with truth makes the difference between knowledge and mere true belief."²⁷ Importantly, if the soldier did not have true beliefs in his belief set and also lacked the pertinent facts to make a determination whether or not a war had a just cause, the soldier would not be warranted in believing that the war had a just cause. More importantly, he could not know whether or not the war had a just cause, and therefore, he could not know whether or not a war was just.

Recall that the beliefs within the belief set are (1) the government is just, (2) a military force is necessary, (3) the exercise of military force is sometimes necessary, and

²⁷ Alvin Plantinga, Warrant: The Current Debate, (New York: Oxford University Press, 1993) 3.

(4) military service is just. As I have represented these beliefs and how they are acquired, I have provided evidence that their truth is empirically verified in numerous ways. Hence, they are warranted.

The soldier makes frequent observations that facilitate repeated verification of the truth of his beliefs. His beliefs are thus, in some sense, testable and subject to falsifiability. As the soldier makes observations, he also judges whether or not they support the truth of the beliefs in his belief set. When he has experiences that support his beliefs, he considers them to be evidence that his beliefs are true. Conversely, when he has experiences that do not support his beliefs, he considers them to be evidence that his beliefs are false.

Frequent observations also strengthen or weaken the warrant he has for his beliefs. For example, warrant for the soldier's belief that the military service is just can be strengthened when he serves as a jury member during the court martial of a fellow soldier, or when he reflects on the justness of the orders given to him by his superiors, or when he observes the removal of an incompetent military commander. If he is asked to lie to cover someone else's mistake, or observes his boss stealing, or feels coerced into following an order he considers illegal, then the warrant for his belief that the military is just is weakened.

In short, to *know* that war has a just cause when the pertinent facts are not known, the soldier reasons that a war has a just cause when the beliefs in his belief set are both true and warranted. The truth of his beliefs is empirically verified. Hence, their truth is subject to repeat verification. The warrant for his beliefs is strengthened or weakened by his experiences.

To summarize, Aquinas' second condition for a just war is determined by considering the pertinent facts when a soldier is in a position to do so. However, most soldiers are not in such a position because of the level of war at which they operate, so a war's just cause is determined by the soldier's belief set. The integrity and trust between the soldier and his superiors provide additional support for the belief set.

Aquinas' third and final necessary condition for a just war is that the intentions of the individuals, soldiers and civilians, taking part in the decision to declare war should be good. Intentions are often private, thus they do not easily lend themselves to evaluation by the soldier. Presumably, it is neither irresponsible nor ignoble for the soldier to assume the intentions of those who make the decision to declare war are good if there is no compelling evidence (via actions) to the contrary.

Summarily, Aquinas' Just War Theory with its three necessary conditions can facilitate the soldier's decision whether or not a war is just. An abundance of news coverage ensures wide dissemination of Presidential authorization and Congressional approval. Just cause is determined either by considering the pertinent facts when a soldier is in a position to do so or by the soldier's belief set. A belief set is comprised of the following beliefs: (1) the government is just, (2) a military force is necessary, (3) the exercise of military force is sometimes necessary, and (4) military service is just. Integrity and trust between the soldier and his superiors further support his beliefs. Aquinas' final determination of good intention is presumed unless there is compelling evidence to the contrary.

The soldier is *ordered* to war, so an overview of the anatomy of military orders will facilitate an understanding of how orders can be questioned within the military framework. Quite simplistically, orders are given and orders are received, thus the principal players are the superior, who gives orders, and the subordinate, who receives orders and carries them out. Lawful orders are legally binding, so a subordinate who is given an order has a legal obligation to obey. But it is not just that orders must be lawful, they must also be morally just. If an order is not morally just, then it is unlawful (in a moral sense) and the soldier is not bound to obey.

The authority to give orders is a function of either the soldier's rank or position. It is always clear when one soldier outranks another because of the hierarchical nature of the military. In an analogous fashion, there are typical superior-subordinate relationships between units. Units at the tactical level are subordinate to units at the operational level. Units at the tactical and operational level are subordinate to units at the strategic level. It is also the case that the military is subordinate to the nation's civilian leadership.

It is possible to think, as McMahan does, that soldiers are "indoctrinated to accept uncritically whatever their superiors in rank tell them [and] that they are intensively conditioned to obey orders without reflection."²⁸ Indeed, the myths and tall tales of veterans of military service have been embellished and perpetrated throughout the years and further exaggerated by the television and film media such that those lacking personal exposure to the military culture might succumb to such an erroneous assessment. In such

²⁸ McMahan, "Innocence, Self-Defense, and Killing in War," 206.

an imagined environment, it is difficult to envision when or how a soldier could be justified in refusing to obey an order. But this seems wrong. It is important to note that when soldiers have wrapped themselves up in their jobs and obeyed orders unthinkingly, they have committed some of the gravest crimes in human history. Consider the German officer who meticulously ensured the timely arrival of trainloads of Jews bound for concentration camps. Blindly following orders will not necessarily exonerate immoral actions.

With respect to these types of examples in which a subordinate carried out an order and subsequently performed an unjust act, one defense for the unjust act was *superior orders*. Telford Taylor writes that

the consequence of allowing superior orders as a defense is not to eliminate criminal responsibility for what happened, but to shift its locus upwards. It would stultify the whole system to exculpate the underlings who follow orders and ignore the superiors who give them.²⁹

Importantly, individual responsibility does not rest solely with those who receive and carry out orders. In fact, responsibility is often thought to be greater for those who give orders, because soldiers who give orders have a responsibility to ensure that these orders are morally just and legally sound.

Wheeler offers a different perspective other than that of conditioned, blind obedience. He writes that

[i]n combat situations, orders are frequently given where life or death depends on instant obedience. For example, the infantry platoon leader upon seeing a suspicious movement out to the corner of his eye yells, "Hit the dirt!" ... I would suggest that these sorts of instances are often taken

²⁹ Telford Taylor, "Superior Orders and Reprisals," War, Morality, and the Military Profession, ed. Malham M. Wakin (Boulder: Westview Press, 1986) 386.

as the paradigm ... despite the fact that the instances cited are themselves the exception and not the rule. Most orders are given in peacetime. And even in combat situations, there is usually some reasonable delay between the giving and the carrying out of an order. This interval allows time for reflection.³⁰

When a soldier is in a life or death situation and given an order, there is an instinctive desire to obey. This seems right because, by definition, the preservation of his own life is an instinct, and in situations where instincts actuate, there is no reflection. There are analogous situations even in cases where there is no hierarchical relationship. If one is driving down the road and the person in the passenger seat yells, "Stop!" I think it most likely that one will hit the brakes. There is no time to question the *order* and to reflect upon its validity or whether or not the passenger is justified in giving an order to the driver. It is best to just obey and ask the relevant questions later.

More importantly, Wheeler introduces discussion about the interval that obtains between the giving of an order and carrying it out. It is during this interval that the soldier has time for reflection. Even in combat situations, there is usually this interval. If, during this period of reflection, the soldier has cause to question the moral impact of his compliance with the order, he has an obligation to make his concerns known to his superiors, specifically the person who gave the order. The proper goal of the military, given this interval, is not blind obedience but reflective obedience.

Wheeler's depiction of cases of blind obedience as the exception rather than the rule is more correct than McMahan's depiction of soldiers who are conditioned to obey without reflection. In peacetime and in wartime, the legal evaluation and moral judgment

³⁰ Wheeler 172-173.

of an order rests with each soldier. While the Uniform Code of Military Justice (UCMJ) does not contain any provision that would obligate a soldier, in any situation, to obey unlawful orders, it does obligate a soldier to obey those that are lawful, as a contractual duty between himself and the nation. Sir John Winthrop Hackett argued that "the will of the people is sovereign and no refusal to accept its expression through the institutions specifically established by it – whether in the determination of policies or in the interpretation of the constitution – can be legitimate."³¹ In accordance with Aquinas' Just War Theory, the declaration of war is a manifestation of the will of the people (at least in our representative system of government). Their will manifests itself in authorization by the ruler and an established just cause and is transmitted to the soldier via orders. As long as that order is lawful, then the soldier has an obligation to obey.

Both the soldier and his superiors are servants of the nation. Because the soldier has an obligation to obey lawful orders from the nation, presumably the nation has a similar obligation to give lawful orders. If the soldier's superiors, as a nation's representatives, give orders that the soldier cannot legally and morally obey, then he is justified in refusing it. Hence, if the soldier is convinced that a war is unjust, he must not participate, because as an instrument of violence in an unjust war, the justness of his actions would correspond to the unjustness of the war. As McMahan has argued, if a war were unjust, then a soldier's actions would be murderous because the unjustness of the war and the unjustness of the soldier's actions in support of the war cannot be separated.

³¹ Hackett 115.

Determination that a war is unjust must be a conviction. The soldier's conviction must be to a degree such that he is willing to face a court martial, that is, a military trial. Because the military community differs in important ways from the civilian community, the military is responsible for administering its own justice system. The justification is that "[m]ilitary members are better able than civilians to understand and respond to problems involving military offenses."³² Refusing an order to go to war is one such unique military offense. To be justified in disobeying such an order, the soldier must make a compelling case in military court that a war is unjust. Any order to participate in an unjust war would be immoral, and immoral orders are unlawful.

³² Air Force Pamphlet 36-2241 Volume I, 1 July 1995, 189.

SECTION 6

CONCLUSION

The US soldier can serve and be morally responsible, because he has a right and a responsibility to determine the justness of a war. We ought not to think that someone who joins the military gives up the right to judge the war as unjust. Soldiers are moral agents and citizens of a democracy. They do not abdicate their right to make moral judgments by choosing to serve in the military. And it is because the soldier's actions in support of an unjust war would be murderous that he has a responsibility to judge whether or not a war is just. It is also because the nature of a just war and the nature of a war where justness is unknown can both change that a soldier has a responsibility to continually evaluate the justness of a war if he is to preserve his morality.

I have advocated that the soldier use Aquinas' Just War Theory for the mechanics of determining the justness of a war. It provides a framework of necessary conditions for the justness of a war to help the soldier in his determination whether or not a war is just. If a war is just, then it is morally permissible for the soldier to fight justly. Conversely, if a war is unjust, then it is morally impermissible for the soldier to fight as he cannot fight justly. It is also the case, however, that the soldier can be called to fight in a war where justness is not known because the facts used to make the determination of justness are

often unclear until long after the fighting has started. In wars where the justness of a war is not yet determined, it is arguably true that the soldier can and should fight justly. In such cases, the morality of the soldier's actions would be judged, that is, if he justly carried out lawful orders, which must also be just, and refused to carry out unlawful orders, of which an unjust order is an example, then he has fought justly and met his moral responsibilities.

In applying Aquinas' theory, the determination of just cause is inherently complex. The soldier's decision as to whether or not a war has a just cause can only be made by considering all the pertinent facts. Only a few soldiers are in a position to determine these facts, as I have argued. In most cases, just cause is determined instead by the soldier's belief set and further supported by the trust and integrity between the soldier and his superiors.

Because the soldier has both a right and a responsibility for judging the justness of a war, he decides when he is going to fight. Hence, there is no necessary connection that commits the soldier to either being or becoming an instrument of violence. The soldier who properly exercises his rights and meets his responsibilities, one of which is determining the justness of war, can and should act justly. Hence, military service, properly understood, is morally permissible.

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